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RIGHTS OF THE CHILD

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos

Addendum

Report on the mission of the Special Rapporteur to the Republic of Fiji on the issue of commercial sexual exploitation of children (11-16 October 1991)

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Introduction

1. At the invitation of the Government of the Republic of Fiji (hereafter referred to as Fiji), the Special Rapporteur on the sale of children, child prostitution and child pornography visited Suva and Nadi, on the island of Viti Levu, from 11 to 16 October 1999, to study the issue of commercial sexual exploitation of children in Fiji. She then travelled to Canberra, Australia, at the invitation of the Government of Australia for one day of meetings, on 18 October 1999, with representatives of the Government and non-governmental organizations.

2. During her visit to Fiji, she met with the Minister for Foreign Affairs, the Minister for Women and Culture, the Commissioner of Police, and the Australian High Commissioner. She also met with representatives of the Ministries of Tourism and Education, the Department of Public Prosecutions, the Fiji Law Reform Commission, the Regional Rights Resource Team, UNICEF, UNDP, UNAIDS, the Fiji Chamber of Commerce and several non-governmental organizations. In Australia, she met with the Minister of Justice, with representatives of the Government of Australia, including from the Attorney-General's Office and the Departments of Tourism, Police and Customs, and with several non-governmental organizations.

3. In Suva, the Special Rapporteur conducted on-site investigations both during the daytime and at night, in order to observe for herself the situation of children in streets and bars. She also had the opportunity to visit two children's homes.

4. A selective list of people and organizations with whom the Special Rapporteur had meetings during her mission is annexed to the present report.

5. The Special Rapporteur would like to express her thanks to UNDP Fiji for the assistance given to her, and her particular appreciation to the Fiji Human Rights Commission for all the logistical and practical support they provided. She wished to thank both the Governments of Fiji and Australia for extending the invitations to her. However, she was disappointed by the apparent lack of interest and awareness of the importance of her visit by the Government of Fiji, which was evidenced by the reluctance of certain ministers to meet with her.

6. The Special Rapporteur would like to take this opportunity to reiterate her position that she does not carry out country visits with the purpose of finding fault with a State, but rather to make a constructive assessment of the situation of children followed by recommendations as to measures which could be implemented by the principal actors to offer greater protection to the nation's young people.

7. The Special Rapporteur chose to visit Fiji in order to study the situation of commercial sexual exploitation of children in a country for which tourism is one of the main industries, generating almost one third of the nation's income. She had been disturbed to receive allegations that Fiji is becoming a popular destination for child sex tourists - adults who travel to certain countries either with the primary purpose of sexually abusing children, or who carry out such activities whilst visiting the country as otherwise legitimate tourists.

8. The Special Rapporteur regrets that the mission took place almost exclusively in the capital, Suva, which is situated on the south-east side of the largest island, Viti Levu. Although

Suva is not the primary destination for tourists, there is virtually no governmental or non-governmental activity outside the capital. The Special Rapporteur would have preferred to have included field visits to the next largest city, Lautoka, situated in the north-west of Viti Levu, and to the smaller island of Vanua Levu. However, the lack of decentralization meant that possibilities for meeting individuals who would have been able to appraise her of the situation of children in these areas were extremely limited.

9. A very large percentage of all of the tourism into Fiji is provided by Australia. Most international flights come from Australia, much of the marketing of the Fijian tourist industry is done in Australia and many Australians have taken up residence in Fiji. Inevitably, every case of sexual exploitation of children by tourists and foreigners which was brought to the attention of the Special Rapporteur involved allegations against Australian men. The Special Rapporteur concluded that a thorough evaluation of the situation coupled with attempts to address it necessitated discussions with governmental and non-governmental representatives of both countries.

I. COUNTRY SITUATION

10. Fiji is located in the Pacific Ocean and comprises 330 islands. The two largest islands, Viti Levu and Vanua Levu, are home to the majority of the population of 800,000, of whom 51 per cent are indigenous Fijian, 42 per cent are Indo-Fijian, and the remaining 7 per cent are Asian and Caucasian. Fifty-three per cent of the population are Christian - largely Methodist, 38 per cent are Hindu and 8 per cent Muslim. More than 60 per cent of the population live in rural areas, with the main urban population concentrated in Suva and Lautoka.

11. The two main industries of Fiji are tourism and sugar. There is also a large garment industry, and much revenue is generated by the sea ports. Unemployment is high. It has been estimated that out of a yearly 10,000 school leavers seeking employment, only 1,500 will find paid work.[1]

12. The business sector is largely controlled by Indo-Fijian families, whilst the government ministries and the military are led by indigenous Fijians. Migrant workers, predominantly Chinese and Filipino, are increasing in number, particularly in the garment industry. Such workers, currently estimated to be 2,000 in Suva, are a largely unregulated workforce and both they and their children are particularly vulnerable to labour exploitation.

A. Sale of children

13. Few incidents involving the sale of a child, other than through involvement in prostitution, have been reported in Fiji. There have been cases where couples from foreign countries have paid large amounts of money to adopt a child, but such instances appear to be rare.

14. Many adoptions take place in Fiji, but these are usually within the child's extended family. Of the remaining cases, some children are adopted by Fijian couples, but the majority go to Australian or New Zealander parents.

15. Whether the adoption is arranged privately or through the public services, there are weaknesses in the system. For example, when a woman goes into hospital to give birth, she does not need to show any proof of her identity. Some hospitals have reported instances of women giving birth and then giving their child a name different from their own. They then have the necessary paperwork with which to register the child falsely under any name, including that of the future adopting parent.

16. Where a child is abandoned, or the mother has not arranged for adoptive parents by herself, the potential adopters are screened by the Ministry of Social Welfare. Adopters can be a couple or single, male or female. The necessary approval is routinely granted following just one visit by the social worker. Another social worker is appointed to ensure the welfare of the child pending his or her adoption, during which time the child will live in a children's home or with foster parents.

17. The potential adopters need to show residency in Fiji for three months, but this is very easy to avoid by using a local address whilst still living abroad. No checks are carried out as to the de facto reality of the residency claim and the decision regarding adoption is made in the magistrate's court after just one hearing.

18. Although there is no evidence to suggest that trafficking of babies and young children for international adoption involving large sums of money is happening in Fiji, the Special Rapporteur is concerned that the potential for unscrupulous individuals to carry out such activities clearly exists.

19. Of greater concern are the number of cases where older children have been taken from their parents to live in Australia and New Zealand. Fijians are generally very friendly and trusting people, and there have been instances where foreigners have taken the time to befriend whole families, gaining the trust of the parents and the child. These cases did not appear to involve the "sale" of the child as such, but parents acting in good faith, have allowed individuals to take their child abroad with promises that the child would be provided with an education.

20. In Australia, there have been several prosecutions of men for sexual abuse of the Fijian boys they had "adopted". The Special Rapporteur was informed that Australian police from New South Wales visited Fiji in 1999 to investigate 15 cases - some dating back to the 1970s - involving children taken to Australia and used in what was described as sex slavery.

21. The Women's Crisis centre in Fiji advised the Special Rapporteur that in certain resorts in Fiji, such as Coral Coast and Sigatoka, a number of expatriate retired men live who have adopted boys and have been the subject of allegations of sexually abusing them. In some of these cases the boys have stayed with the men into adulthood and have inherited the men's property. The material gain for such children might explain the reluctance of most to make an official complaint about the abuse in later life.

22. Unfortunately, no information concerning government initiatives to combat illegal adoption through the Department of Social Welfare was available. The Special Rapporteur was advised that the Government has expressed concern about the international adoption of Fijian children and she would have welcomed a dialogue on this matter. She was therefore extremely disappointed that neither the Minister nor any member of the Ministry of Social Welfare made themselves available for a meeting with her.

B. Child prostitution

23. The primary causes for children entering prostitution in Fiji were attributed to abuse suffered by the child within the family and to economic factors. The contribution of boredom arising from a lack of employment opportunities and leisure activities was also cited.

24. Many cases of incest and physical abuse of Fijian children were reported to the Special Rapporteur. Every day, the newspapers relate stories of abuse of children by parents, step-parents, grandparents and other family members. The Special Rapporteur appreciates the role that the media are playing in highlighting this problem and raising awareness of the extent of familial abuse in Fiji.

25. One case which was reported in the media at the time of the Special Rapporteur's visit was of a grandfather who had abused several grand-daughters over a period of years. One of the girls, now an adult, brought a complaint against him. He was charged, found guilty, but set free because of his age. It was reported that all the girls had become prostitutes. Cases were also reported to the Special Rapporteur of parents forcing daughters into prostitution.

26. Boys who are abused and rejected by their families are similarly at risk of entry into prostitution. Sometimes this rejection arises from the family's perception that the boy is homosexual, with the result that such boys leave home and form new communities on the streets with other boys in similar situations. Incest involving boys is a subject of even greater taboo than that involving girls, and there are virtually no facilities in Fiji providing a forum for male victims to turn to.

27. Children living in squatter settlements are particularly at risk. Both Fijian and Indo-Fijian families are typically large, with perhaps as many as 10 children. Often the whole family will live in just two or three rooms, with a consequent absence of any privacy. Children grow up witnessing sexual activity and being especially vulnerable to abuse and sexual intercourse at a young age.

28. The poverty suffered by those living in such settlements is a major inducement to entry into prostitution. Children see so much unemployment that they lose their motivation to study, particularly when their parents are unemployed and uneducated. Sometimes the mother of such children is in prostitution herself and the children learn that they can make money with their bodies.[2]

29. Around Christmas time, many new children are seen prostituting themselves on the streets in Suva. This has been attributed to a desire to earn money in order to buy gifts.

30. There are very few recreational activities for children in Fiji. Boredom, especially amongst young teenagers has led to high rates of alcohol consumption and they are often seen drunk by 5 p.m. and hanging around bars and prostituting themselves by 7 p.m.

31. Young girls allow themselves to be picked up and taken into nightclubs. Once a man has paid the entry fee and bought the girl some drinks, there is an understanding that the girl will later have sex with him.

32. Although there does not appear to be a problem with hard drugs such as cocaine or heroin in Fiji, marijuana is easily accessible and can even be bought in schools for as little as 50 US cents. Both adults and children can be seen in bars and public places, drinking and smoking marijuana until they pass out.

33. The three main causes outlined above have all contributed to the growth in the number of children who are prostituting themselves to both local and foreign men. These may be children living on the streets or those who still live at home.

34. However, the police have recently found that the young prostitutes are disappearing from the streets and they believe that they are now going to hotels. Several non-governmental organizations confirmed that taxis pick up the girls from schools, the girls change into different clothes whilst on their way to their assignments with men waiting in hotels and they are later returned home, presumably without their parents knowing of their activities. Young street boys are also being taken to hotels for the same purpose.

35. The Members of the Fiji Aids Task Force have much direct contact with those in prostitution as they go out on to the streets to talk to people about HIV-AIDS and give out educational material and condoms. They consider that the prostitution that goes on in Suva primarily involves local abusers, although they referred to instances where men from overseas have visited the Task Force Office wanting information about where the "action" is.

36. The prostitution that occurs in the west of the country involves a much higher percentage of tourists. As well as those who visit Fiji for short holidays, some stay for much longer periods of time and develop relationships with the families of the children whom they later abuse. Occasionally, boys have disappeared from the streets and have later been found living in private homes as "house boys", providing domestic and sexual services in return for a more comfortable lifestyle.

37. The prostitution in Suva does not appear to be controlled by pimps, but the role of taxi drivers in this regard should be examined more closely. Many organizations with which the Special Rapporteur had meetings referred to the involvement of taxi drivers, both in helping men to find prostitutes and in arranging a rendezvous point. Most taxis are owned and run privately with no accountability for their activities.

38. The situation in Nadi and other tourist areas is somewhat different, in that pimps are very much involved and sex tourism is reported to be an organized industry, long since developed from the situation of individuals operating alone.

39. Other abusers of children include sailors, especially from Korean and Taiwanese ships, which come to Fiji for refuelling. There are reports that parents even make money by offering the sexual services of their own children to sailors.

40. Certain non-governmental organizations informed the Special Rapporteur that although women have prostituted themselves quite openly on the streets of Fiji for generations, paedophilia is a very new and relatively discreet phenomenon. However, one individual who was in his 60s, informed the Special Rapporteur that throughout his life he had heard accounts of abuse involving foreign men and young boys. He recalled being invited as a young teenage boy to a party organized by a foreign man who had moved to Fiji. At the party the only guests were other boys of a similar age and he witnessed the host stroking the leg of one of these boys.

41. Abusers generally target poor families, especially single mothers, and offer to help with the finances of the family - for example by sending the child to school. As with some of the reports of illegal adoption, there have been cases where the child has been taken abroad with the consent of his parent and with promises of education.

C. Child pornography

42. Child pornography and the term "paedophilia" were virtually unheard of in Fiji until two years ago. One case, which was still being heard at the time of the Special Reporter's visit, has raised awareness about the concerns of her mandate amongst the Fijian population.

43. An Australian, who had been living in Fiji for several years, was arrested in Suva in 1997, following the discovery of many images of child pornography on the hard drive of his lap-top computer, which he had returned to Australia for repairs. The Australian computer crime investigation squad alerted the Fijian police, who went to his house and found four young girls aged between 4 and 14 living with him. The police also found two other computers with approximately 2,800 images of child pornography. He had set up connections to trade pornography on the Internet and had sent messages concerning payment for pictures.

44. The police discovered that the girls who were living with him featured in his pornographic collection, and the three older girls gave evidence that he had had sex with them. The police asked for other complainants to come forward, whereupon 37 children made statements alleging various sexual offences committed by him against them.

45. The accused had operated by initiating the children into sex slowly - one witness with whom he had first had sex when she was only aged 9, said that she did not like it at first but after a while she became used to it and enjoyed it. That witness had become pregnant and given birth when she was 13.[3]

46. The Department of Public Prosecutions has faced considerable difficulties with this case. At the time of the Australian man's arrest Fiji had no laws governing child pornography, computer crimes or Internet offences.[4] As regards the sexual abuse of the children, the most appropriate charge, which would have perhaps imposed an adequate penalty would have been that of defilement, as all the children involved were under the age of consent. However, the offences were uncovered up to seven years after the defilement of his earliest victims, and it was

impossible to determine exactly when the first act of sexual intercourse had taken place with any of the children. The only charge left available to the prosecution was that of rape, for which the sentence would be five years if handed down by the magistrate's court, and six years if from the High Court.

47. The difficulties continued for the prosecutors, this time as a result of reluctance on the parts of the victims and their families to condemn this man for his abuses. The girls involved had come from poor families whom the accused had been assisting financially. At the time of his arrest, the families of the victims questioned the actions of the police, saying that he had helped them and their children in many ways.

48. Once he was arrested, much of the financial support to these families stopped and the children started to withdraw their accusations against him. Some of the children even still live with him and others have now refused to give evidence in court against him.

49. Even the pornographic images, which provide clear evidence of his abuse of children, cannot be introduced as evidence for the prosecution, as there were no laws against the production of such images when he was arrested. Of the 37 initial complainants, at the time of the Special Rapporteur's visit all but two had withdrawn their allegations against him or had become very hostile towards the prosecution.

50. One other case involving the effects of pornography was ongoing at the time of the Special Rapporteur's visit, and was brought to her attention by the Women's Rights Movement. A young girl aged 11 had allegedly been gang-raped by five local men after they had been watching pornographic films.

II. LEGAL FRAMEWORK

51. Fiji ratified the Convention on the Rights of the Child on 13 August 1993 and submitted its initial report to the Committee on the Rights of the Child in 1996. The Committee welcomed the then recent establishment of several mechanisms concerning children's rights, namely the Coordinating Committee on Children (CCC), the Children's Unit within the Ministry of Health and Social Welfare and the Child Abuse Unit within the Police Department.

52. The Committee expressed concern over a number of areas where the response of the State party fell short of the requirements of the Convention on the Rights of the Child. These included the lack of a systematic data-collection mechanism, inadequacies pertaining to the birth registration system, the continuing use of corporal punishment by parents and teachers, insufficient awareness and lack of information about ill-treatment and abuse, including sexual abuse, both within and outside of the family, as well as insufficient legal protection measures, appropriate resources and adequately trained personnel to prevent and combat such abuse.

53. Other areas of concern for the Committee included the high drop-out rate from school, insufficient measures to address drug and alcohol abuse, and the inadequate rehabilitation measures for ill-treated, sexually abused and economically exploited children, as well as their limited access to the justice system.

54 Under the Penal Code, there are a number of offences relating to the sale and trafficking of children Section 152 of the Code makes it "a felony to take away or detain against her will, a woman of any age, if the intention is to marry or have sexual intercourse with her"

55 The Special Rapporteur is alarmed that a similar provision in section 254, entitled "Abduction of girls under 16 years", only makes it a misdemeanour to "unlawfully take any unmarried girl, being under the age of 16, out of the possession and against the will of her father and mother"

56 Sections 162 (1) and 163 (1) also make it a misdemeanour for any parent or person having custody, charge or care of a minor under 16 years, to sell, hire or otherwise dispose of the minor and for any person to buy, hire or obtain possession of a minor under 16 years, with intent that such minor shall at any age be employed or used for the purpose of prostitution or illicit sexual intercourse, or for any unlawful and immoral purposes, or knowing that such minor will be used for such purpose

57 Under the Penal Code, the usual penalty for a felony is imprisonment for up to five years, and for a misdemeanour, imprisonment for one year

58 Child stealing is covered under section 254, but protects only those children under the age of 14, making it a felony to lead, take away, decoy, entice away or detain any child with intent to deprive any parent or other person having the lawful care or charge of such child

59 The section of the Criminal Procedure Code entitled "Offences against morality" includes a number of offences forbidding sexual exploitation of females and minors, including making it an offence to procure or attempt to procure a woman or girl under the age of 21 years for prostitution

60 Since December 1997, pornographic activity involving juveniles has been subject to criminal penalties under The Juveniles (Amendment) Act, 1997, which amends section 62 of the Juveniles Act with a new section (s 62A) The new section provides a thorough list of offences such as recording, reproducing, viewing, making, distributing and trafficking in pornography involving juveniles, or those who appear to be juveniles The Special Rapporteur welcomes this new legislation and considers that the penalties to which offenders would be liable - imprisonment not exceeding 14 years for a first offence and up to life imprisonment for a second offence, meet the obligations under the Convention on the Rights of the Child

61 The Fiji Law Reform Commission has been given the mandate to inquire into, report upon and make recommendations in respect of the laws relating to the protection of children, offences committed against children, evidence given by children and, in particular, to consider the adequacy in this regard, of the Juveniles Act, the Criminal Procedure Code, the Penal Code and the Adoption of Infants Act

62. In May 1999, the Law Reform Commission published a discussion paper[5] which considered the current legal regime governing sexual offences against children. The paper contains proposals for change and was intended to raise public awareness and provoke debate. The recommendations it contains have been made against the background of Fiji's commitments under the Convention on the Rights of the Child and the Special Rapporteur welcomed the opportunity to contribute to the process.

63. The most notable recommendations of the paper were (i) the removal of the term "carnal knowledge" and replacement with the term "sexual intercourse", (ii) the broadening of the definition of sexual intercourse and (iii) the removal of gender specific language in favour of gender neutral language.

64. The Special Rapporteur voiced her grave concerns to the Law Reform Commissioner about the inadequacy of the sections of the Criminal Procedure Code in accordance with which those responsible for selling a child into prostitution are charged only with committing a misdemeanour. The Special Rapporteur urged the Commissioner to carry out a review of these sections as a matter of the utmost priority and to propose the penalization of such activities in an appropriate and effective manner which would bring the law of Fiji into line with its international obligations under article 19 of the Convention on the Rights of the Child.

III. THE CRIMINAL JUSTICE SYSTEM

65. The effect of the currently weak legislation with regard to the protection of children was illustrated in several cases. In September 1999, the Sigatoka magistrate's court heard a case against a man accused of raping his 12-year-old step-daughter. The magistrate sent the case to the High Court because she would only be able to sentence the accused if he was found guilty, to a maximum of five years' imprisonment. However, as he was a first-time offender, the High Court returned the case to the magistrate's court and he was eventually sentenced to a four-year prison term.

66. Corollary to inadequate legislation is the lack of severity with which such cases are viewed in the High Court. Most of the abuse cases are against female children and a lack of gender awareness amongst the members of the male-dominated High Court was alleged as a principal reason for such light sentencing.

67. Following the ratification of the Convention on the Rights of the Child by Fiji, the Fiji Cabinet established the Coordinating Committee on Children (CCC) in 1994 with the mandate to mainstream children's rights throughout the various government ministries and provide a coordinated approach to cases involving children.

68. The need for such a body had been highlighted in a particularly tragic case known as the "Banana murder" in 1994. A little boy was killed by his step-father because he had eaten some bananas. His mother had reported the abuse against him six times to different agencies. It appears that prior to his death, all the agencies assumed that one of the others was looking into the case and, in the event, nothing was done to protect him.

69. In another case, a mother beat her daughter. The neighbours had reported this several times, but again, all the agencies passed on responsibility. The child later died from infection due to her beatings.

70. The conclusion was reached that where a case was reported to one agency, all relevant agencies should be informed to ensure that no cases were overlooked. A child protection inter-agency group was set up involving all the agencies, and all reported cases were discussed in the inter-agency group in twice-weekly meetings. It was successful for two years, but when the initiators of the group moved on to other jobs, the commitment and enthusiasm faded.

71. Through the subsequent creation of a legal sub-committee, the CCC considered measures to improve the protection of children's rights in the justice system - whether the child was the offender or the victim. Many recommendations for change were made under the Children and Young Persons Act, which, inter alia, introduced "youth conferencing" for children in conflict with the law. In this system, rather than the case being heard in a court, all the parties involved would be invited to meet together and discuss the case. The offender would be forced to confront his actions, the issue of restitution would be discussed, but the case and the child would be kept out of the courtroom.

72. Another very welcome development introduced by the CCC has been the use of screens in the courtroom, so that the child victim does not need to be directly confronted with his or her abuser. Now, every court in the country uses screens. In rural areas where it proved difficult to deliver the large screens, traditional Fijian mats are used instead.

73. The Special Rapporteur met with the Police Commissioner and is appreciative of the very candid dialogue they were able to have. Fiji has traditionally had a culture of insensitivity in the Police Force, and when the CCC was first established, it received many complaints about police attitudes. One non-governmental organization advised the Special Rapporteur that its staff had come across many cases where they were certain that a child had been abused, but he or she was too afraid to talk about the experience to anyone, particularly fearing becoming involved with the law.

74. The Police Commissioner is to be commended for his efforts to change the image of his Force in Fiji. He expressed his commitment to improving the situation of children in Fiji and outlined some of the measures that he has taken in this respect.

75. Concerning domestic violence, the traditional response of the police was to adopt a "conciliatory approach" and avoid becoming involved in what was considered best kept within the jurisdiction of the family. In response to mounting pressure from the women's movement, the Police Commissioner introduced a "No drop policy" in 1995. This means that every complaint which comes under the definition of "Violence between heterosexual adults who are living together or have previously lived together as husband and wife (conjugal relationship)" should be fully investigated and offenders taken to court. Police officers are advised that this policy applies to themselves as well, and that under no circumstances should they promote reconciliation in domestic violence cases.

76. Several other agencies with which the Special Rapporteur had meetings confirmed that the introduction of the "No drop policy" has had a huge impact on the reduction of levels of domestic violence by husbands against their wives. However, the Special Rapporteur remains uncertain as to the extent to which this policy covers offences of domestic violence against children. She considers that an extension of its ambit in this way is essential. Corporal punishment is a traditional sanction for children in Fiji, and physical violence against young people in the home is of serious concern. In one case reported to the Special Rapporteur, a girl of 18 committed suicide because she was beaten so badly by a family member.

77. In schools, the incidence of beatings has been reduced since a law was passed providing that only the school principal is allowed to administer corporal punishment. It is to be hoped that eventually this punishment will be removed from schools altogether.

78. In 1995, a Police Sexual Offences and Child Abuse Unit was established.[6] With the help of the CCC, AusAID[7] and UNICEF, police and judges have been given child-sensitive training. In the beginning, only a certain number of police received this training, but a lack of resources often resulted in the trained police being reassigned to different posts. The Unit started to be treated as one to be staffed by women alone, and the Police Commissioner's intention that all police officers be given this training has been defeated by inadequate resources.

IV. THE GOVERNMENT

79. Children's homes in Fiji are supported to a certain extent by the Government, by the Governments of Australia and New Zealand and by the churches of Fiji. There are no wholly government-run children's homes in Fiji.

80. The Special Rapporteur visited the Dilkusha and St. Christopher's Children's Homes. Both reported that they receive children from all over Fiji, but it was apparent that most of the children were of Indo-Fijian origin. The majority of children are brought to the homes by the Department of Social Welfare, others by church organizations and, in occasional situations, by the homes themselves.

81. The majority of the children come to the homes because their parents are extremely poor and cannot look after them. However, most children have at least one parent who comes to visit him or her every week and some of the children were able to go home to family members for a holiday. It was apparent from the confidence and happiness of most of the children whom the Special Rapporteur met, that they were well loved and cared for.

82. St. Christopher's Home estimated that 5 per cent of the young children who come to the home go for adoption. Dilkusha reported having only a very small percentage of adoptable children, but has an adoption programme which is now in its tenth year. Some of these children are adopted locally, but the majority go to Australian and New Zealand applicants.

83. Both homes reported that some of the children arrive having suffered physical or sexual abuse, sometimes of a violent nature. These children may have been brought to the homes to be protected from further abuse. Sometimes girls come to the homes because they are pregnant. In the Indian communities especially, being an unmarried mother is not always an acceptable condition.

84. All the children in the homes go to school and some go on to university. Most schools in Fiji are operated by local communities and non-governmental organizations in partnership with the Government. There appears to be some confusion even among teachers as to whether school fees are compulsory or not.[8] The Ministry of Education states that fees are not compulsory and that no child is to be denied attendance for failing to pay any of these fees, but in some schools, fees have become compulsory in effect because various forms of pressure are put on children to pay, for example by sending them home, preventing them from enrolling the following year, or not allowing them to sit for external exams.

85. The standard of sex education in schools was reported to be inadequate. Although the Ministry of Education states that 200 schools have sex education on the curriculum, approximately just four are providing such lessons, and even these have dedicated such a small amount of time to the lessons that they are not having any impact. The reason for this was reported to be the lack of training available for teachers to carry out such classes adequately. The AIDS Task Force reported being in great demand to visit schools to inform the children about safe sex.

86. The Special Rapporteur welcomes the efforts that the Government has made to make the subject of domestic violence a national priority. The Fiji Women's Crisis Centre has been given this mandate and the Government has committed itself to a campaign of public awareness about violence against women.

87. It is clear that the primary focus of the campaign against domestic violence has been on women's rights and it is unfortunate that in attempts to promote women's rights the issues have been packaged together with children's rights. This had resulted in children's rights being rather subsumed by the former, and not given the attention that they so desperately need. Although the girl child will reap benefit from the campaign on violence against women, the isolation of the boy child who may be suffering the same sexual and physical abuse as his sister will not be dealt with adequately unless the rights of the child are given equal but separate attention.

88. Concerning the abuse of children by foreigners, the Ministry of Tourism, although admittedly aware that the tourist industry was a contributory factor in the growth of paedophilia in Fiji, did not consider that the problem was yet of sufficient gravity to merit its active involvement in preventive measures. The representative of the Ministry informed the Special Rapporteur that budgetary constraints would not enable it to place the problem of child sex tourism on its agenda.

89. The Special Rapporteur was disappointed that although awareness was not lacking in this Ministry - the representative advised her that child sex tourism is now discussed at all major tourism conferences - the Fijian Ministry of Tourism does not consider that it has a role to play in this regard. She would strongly recommend that adequate resources be allocated to empower the Ministry to take up this very important role before more children fall victim to such tourists.

90. By contrast, the Special Rapporteur was encouraged by the attitude of the Director of the Fiji Visitor's Bureau, who was interested to learn how his organization could contribute to stopping child sex tourism in Fiji and who felt that the issue was not being treated with sufficient gravity.

91. The Government of Australia, through the Department of Foreign Affairs and Trade (DFAT), has responded to the claims that its nationals are responsible for committing abuses against children while visiting other countries. It has signed memorandums of understanding on the prosecution of child sex offenders with Fiji and with other countries, such as the Philippines. These MOUs have very broad terms, which even extend to provisions such as assistance to the child victim. Legislation was adopted in Australia in 1994 which provides a penalty of up to 17 years' imprisonment for Australians who have sex with a child under the age of 16 while abroad. The legislation is intended for use if the domestic legislation of the country concerned fails. In partnership with the Global Network to End Child Prostitution, Child Pornography and Trafficking (ECPAT), DFAT has been seeking to raise awareness of these issues within Australia, for example through the provision of information to travel agencies and through a leaflet sent to individuals when they apply for a passport.

V. NON-GOVERNMENTAL ORGANIZATIONS

92. Whilst in Fiji, the Special Rapporteur met with representatives of international and local non-governmental organizations. All conveyed to her their alarm at the growing number of children both living on the streets and entering into prostitution. Although few statistics were available, for a country with a population of less than one million, the estimates of 200 street children at any one time in Suva alone are extremely high. One representative counted 69 girls in one night, hanging around in known pick-up spots in Suva, and regularly sees up to 20 children known to be in prostitution in the centre of Lautoka.

93. One non-governmental organization which works directly with street children, the Department of Christian Citizenship and Social Services Methodist Church, regularly comes into contact with approximately 40 street children in Suva. It encourages the children to explore ways to earn money rather than begging or soliciting for it. For example, the Department has provided them with shoe-shine equipment, and helped them to open bank accounts to encourage them to save their money and reduce the risk of having it stolen.

94. However, these activities have met with opposition from the police, who have said that such actions are encouraging the children to stay on the street. In summer 1999, several policemen threw the children's shoe-shine equipment into the river, saying that they did not have a licence to carry out their work.

95. The Department has been working with the Police Commissioner to try and change such attitudes among the police and to teach them that such actions merely push the children into prostitution or petty crime.

96. The Special Rapporteur met with representatives of the international organization Save the Children Fund Fiji (SCF) and a local non-governmental organization, Project Heaven, which carry out certain projects together. For over 25 years, SCF has run a child sponsorship scheme, which has given them an insight into the reasons for the high rate of children dropping out of school.[9] The two main reasons have consistently been found to be related to financial pressure and a lack of parental commitment to education. Through carrying out assessments of children's eligibility for sponsorship, which involves looking into the family situation, SCF has discovered many cases where children, both Fijian and Indo-Fijian, have been abused, usually by uncles and step-fathers.

97. Where such cases have been found, SCF has provided counselling to the child and occasionally, if the circumstances merited it, has removed the child to one of the children's homes.

98. The primary concern of Project Heaven, which also works in conjunction with the Fiji Red Cross Society, is to ensure that Fijian children benefit from health services. Project Heaven provides a service testing hearing and vision, which has helped children who had previously dropped out of school as a result of undiagnosed impairments. The methods of testing have also revealed an alarming incidence of physical violence against children. Small hammer-shaped instruments are used to test both ears and eyes, and Project Heaven reported numerous cases of children cowering and even screaming with fear when approached by the doctor with these instruments. A number of these children have subsequently revealed that they are beaten at home with certain implements.

99. All the organizations, including the international non-governmental organizations with which the Special Rapporteur had meetings in Canberra, agreed that measures to protect children from physical and sexual abuse were very inadequate, but that the protection offered to boys was virtually non-existent. Where people want to report children's problems, they are likely to turn to the Women's Crisis Centre, which does not really have the capacity to deal with girl children's problems, let alone those of boys.

VI. THE PRIVATE SECTOR

100. In the course of developing her mandate, the Special Rapporteur has concluded that the private sector, the business community, could be an invaluable partner to those who seek to protect children, but the opportunity to make this a reality has so far been lost because of the failure by relevant parties to recognise their mutual concerns.

101. The Special Rapporteur was therefore particularly appreciative of the opportunity to meet with representatives of the Fijian Chamber of Commerce, both in Suva and in Nadi. During very fruitful dialogues, the representatives informed the Special Rapporteur that the Chamber is already looking for avenues in which to promote youth development and prevention of crime.

102. In particular, they expressed their concerns at the lack of recreational facilities for children after school hours. The Special Rapporteur made some suggestions as to measures that they could take to improve this situation. For example, there is a park in the centre of Suva, which is situated next to a fast food restaurant. There are no lights around the park, it is frequented by alcoholics and drug addicts, and is a well known area in which to find children for prostitution. The Special Rapporteur suggested that with the assistance of the restaurant owner, it would not involve very much expense to clean up and provide lights around the park, making it a safe place for children to play, which would in turn attract more customers, especially families, to the restaurant.

103. The Special Rapporteur thanks the representatives of the Chamber of Commerce with whom she met for their very enthusiastic response to her ideas as to possible ways in which they could contribute and looks forward to a continuing collaboration with them.

VII. CONCLUSIONS AND RECOMMENDATIONS

104. The Special Rapporteur is disturbed that the contagion of commercial exploitation of children does not seem to have spared even a relatively isolated country like Fiji. Reports received from both governmental and non-governmental sources indicate that children in Fiji are subject to exploitation through both prostitution and pornography. In her dialogues in Suva, the Special Rapporteur expressed her belief that even in the absence of hard data and statistics there are strong indicators pointing to the existence of these nefarious practices against children in the country. These indicators are inter alia: (a) the escalating number of street children, (b) drug, alcohol and substance abuse by children, (c) sexual violence, including incest, suffered by children and (d) a dependency upon tourism, the negative effects of which do not appear to have been taken into consideration by the Government.

105. The sale of children other than for prostitution or pornography is generally unheard of in Fiji. However, some non-governmental organizations have expressed their apprehension that weaknesses in legislation covering adoption might eventually bring the problems of sale of children for inter-country adoption to Fiji.

106. The Special Rapporteur would like to make the following general recommendations:

(a) There is urgent need for strong political will to implement legislative reform and to formulate policies for the protection of children, in order to bring Fiji into line with its obligations under the Convention on the Rights of the Child. The Special Rapporteur is disturbed by the very permissive environment for child abuse and exploitation created by the lack of effective punitive sanctions under the Penal Code. This applies equally to the sale and trafficking of children, as well as their entrapment into situations of prostitution and pornography.

(b) Child protection should be mainstreamed throughout government programmes and activities, particularly those of the Ministries of Tourism, Education, Justice and Social Welfare. The Special Rapporteur would like to caution that the welfare of children should not be sacrificed to the Government's reliance on tourism as a major source of income. The Special Rapporteur would like to express her hope that the failure of the Minister of Tourism to meet

with her is not indicative of indifference or apathy on the part of the Government to the risks to children that tourism can create. In this regard, strong political will must be coupled with the sensitizing of all government officials to the vulnerability of children and their need for urgent and special attention.

(c) The general public should be educated not only as to the provisions of the Convention on the Rights of the Child, but also about the various threats to the welfare of children and the methods by which the perpetrators operate, especially in the fields of commercial sexual exploitation.

(d) The Special Rapporteur is convinced that children in Fiji are being commercially exploited sexually both by local and by foreign abusers, and that there is an urgent need for the Government to address this issue while it is still early enough to institute both preventive and remedial actions.

(e) The Special Rapporteur is likewise convinced that both boys and girls are equally being ensnared not only in prostitution but also in pornography, and that programmes should not be limited to girls. In this respect, differences in the modus operandi for recruitment of boys and girls, the methods of recruitment, the forms of abuse and exploitation, the specific and varying activities to which boys and girls are subjected, the effect of the abuse on them, their coping mechanisms and other important factors must be the subject of research and data gathering which could then be the basis for meaningful preventive and/or remedial action.

(f) The matter of non-commercial sexual abuse must be accorded urgent attention, especially that which is perpetrated in the context of the family. Incest and other types of domestic violence, abuse and neglect should be examined in relation to the age and sex of the victim.

(g) There is a need for specific programmes to provide children with wholesome recreational facilities. These are currently almost non-existent in Fiji. Parks and other areas where children congregate should be made safe places for them, instead of being effective contact points for potential abusers of children.

(h) Schools should be adequately empowered and resourced to monitor strictly and prevent the dropping out and truancy of children from school. Activities taking place at the end of the school day should be regular, and the times and locations of these activities must be made known to parents.

(i) Hotel, motel and bar owners, and taxi drivers and operators need to be sensitized to the imperative need for children to be protected from commercial sexual exploitation. Sanctions should be imposed on those who lend themselves in one way or another to recruiting, or facilitating the use of, a child for prostitution and/or pornography.

(j) Resources should be allocated to provide a comprehensive programme of sex education in all schools, which should include health education on HIV/AIDS and other sexually transmissible diseases.

(k) Drug, alcohol and other substance abuse by children should be matters of high priority for the Government. The Special Rapporteur was particularly concerned to learn that marijuana is very affordable and freely accessible by children of all ages in the school grounds.

(l) The locations in which children are at greater risk should be identified in every town or city. These areas should be monitored and protective initiatives should be developed. These initiatives should be given a good level of visibility in order to deter potential child abusers.

(m) The beaches of Fiji, including the private ones, should be monitored and made safe for children. The Special Rapporteur would like to stress that the fact that a resort caters only to wealthy clients should not lull the Government into believing that illicit activities involving children are not being conducted on its premises. Often it is this very exclusivity that gives the clients a feeling of security against any intrusion from protectors of children.

(n) All police should receive training to sensitize them to the plight of children who are victims of or at risk of sexual exploitation. At the same time, law enforcement should be strengthened in number throughout Fiji. A change in attitude must be effectuated, from wanting to clean the streets of children to cleaning the streets for children, not arresting the children but their abusers and not acting as persecutors but as protectors of children.

(o) Children in extremely impoverished areas such as squatter settlements should be given special consideration and protection, not only as being the primary targets for exploiters but also as being among those most vulnerable to the deceptions and ploys of recruiters.

(p) There should be a national focal point for children to coordinate not only the formulation of policies for the greater protection of children but also all the various programmes and activities for the promotion of children's rights, for the prevention of infringement of those rights, for the extrication of children from abusive situations, and for their recovery and reintegration.

(q) Enhanced cooperation is needed between the government agencies and the non-governmental organizations dealing with children, and better coordination and allocation of responsibilities should be established so that the problems afflicting children are addressed in their totality.

(r) Encouraged by the success of her dialogues with leaders of the business community both in Suva and in Nadi, the Special Rapporteur urges the Government to explore ways and means of cooperating with the business sector on effective partnership for the promotion and protection of children's rights.

Notes

[1] State of Pacific Youth Report 1998, UNICEF Pacific.

[2] The Special Rapporteur was advised that boys sell themselves for as little as 50 US cents.

[3] It was not established that the accused was the father of her child.

[4] Pornographic activities involving juveniles have been incorporated in an amendment to The Juveniles (Amendment) Act, 1997 - see section II, The legal framework.

[5] "Offences against children - sexual offences against children in Fiji, Discussion paper", published by the Fiji Law Reform Commission Ref: FLRC 4/8, 24 May 1999.

[6] Between 1995 and October 1998, a total of 1,246 cases were reported to the police.

[7] AusAID, the Australian Government's Overseas Aid Programme carried out a feasibility study and project identification mission in July 1999, to look at the situation of child abuse in Vanuatu, Fiji and Samoa, and make recommendations as to the nature of a project that could be undertaken in the area of local capacity-building to improve the protection of children. AusAID reported that it was not possible to quantify the extent and nature of abuse that occurs, but all those consulted believed child abuse to be widespread and grossly under-reported. Police capacity was reported to be constrained by lack of dedicated training and focus on child protection, and by limited resources spread thinly across a vast number of small and remote communities.

[8] Keeping Children in School - Fiji School Enrolments and Save the Children Fund's Child Sponsorship Scheme, Save the Children Fund Publication 1998.

[9] Ibid.

Annex

LIST OF PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HER MISSION

Fiji

Dr. Tupeni Baba
Minister for Foreign Affairs

Mr. Emitai L. Boladuadua
Ministry of Foreign Affairs

Mr. Isireli Senibula
Ministry of Education

Ms. Margaret Ludlow
Ministry for Women and Culture

Ms. Ilisapeci Natau
Ministry for Women and Culture

Ms. L. Kiti Makasiale
Ministry for Women and Culture

Ms. Sereima Lomaloma
Ministry for Women and Culture

Ms. Tupou Vere
Ministry for Women and Culture

Ms. Lagilagi Uluiviti
Fiji National Council for Disabled Persons

Mr. Rajeshwar Singh
Director of Tourism

Mr. Sitiveni Yaqona
Chief Executive, Fiji Visitors Bureau

Mr. Isikia Rabici Savua
Police Commissioner

Mr. Moses Driver
Assistant Police Commissioner

Ms. Merewalesi
Police Superintendent

Ms. Unaisi Vuniwaqa
Fiji Police Force Sexual Offences and Child Abuse Unit

Ms. Rachel Olutimayin
State Prosecutor, Director of Public Prosecutions Office

Mr. Aiyaz Sayed-Khaiyum
Senior Legal Officer, Director of Public Prosecutions Office

Ms. Vandhna Narayan
Women's Crisis Centre

Ms. Salote Malo
Women's Crisis Centre

Ms. Mere Pulea
Fiji Law Reform Commissioner

Ms. Asenaca Uluiviti
Senior Legal Officer, Fiji Law Reform Commission

Ms. Raijeli Vasakula
Legal Officer, Fiji Law Reform Commission

Mr. Graham E. Leung
Fiji Human Rights Commissioner

Dr. Shaista Shameen
Director, Fiji Human Rights Commission

Ms. Vukidonu Qionibaravi
Fiji Human Rights Commission

Mr. Luke Qiritabu
Fiji Human Rights Commission

Justice Nazhat Shameem
Judge

Mr. Apolosi Bose
Resource Trainer, Regional Rights Resource Team

Ms. Vani Dulaki
Chief Resource Trainer - Community Development
Regional Rights Resource Team

Ms. Christine Arjun
Resource Trainer, Regional Rights Resource Team

Ms. Imrana Jalal
Chief Resource Trainer - Legal/Rights
Regional Rights Resource Team

Ms. Wafi Seeto
Resource Trainer Legal
Regional Rights Resource Team

Mr. Filipo Masaurua
Resource Trainer Legal
Regional Rights Resource Team

Mr. Leonard Chan
Project Manager
Regional Rights Resource Team

Ms. Sarah Mills
Legal Rights Officer
UNICEF

Mr. Steve Vete
Inter-Country Programme Advisor
UNAIDS

Mr. Romulo V. Garcia
United Nations Resident Coordinator
and UNDP Resident Representative

Ms. Yu Kojima
Programme Management Officer
UNDP Fiji

Ms. Morven Sidal
South Pacific Association of Theological Schools

Deaconess Olivia Nataniela
Dilkusha Home

Sister Mele
St. Christopher's Home

Ms. Marama Sovaki
St. Christopher's Home

Mr. Irshad Ali
Child Sponsorship Management
Save the Children Fund Fiji

Ms. Talica Sautu-Ratulevu
Project Manager/Coordinator
Project Heaven

Ms. Gina Houng Lee
Coordinator, Women's Rights Movement

Mr. E. P. Sotutu
Secretary, Department of Christian Citizenship and Social Services Methodist Church

Rev. Akuila Yabaki
Executive Director, Citizens Constitutional Forum

Ms. Jane Tyler
Fiji AIDS Task Force

Mr. Robert Verebasaga
Fiji AIDS Task Force

Mr. Jovesa Speith
Fiji AIDS Task Force

Ms. Amelia Rokotuivuna
Young Women's Christian Association

Mr. Taito Waradi
Chamber of Commerce, Suva

Mr. Natwarlal R. Chauhan
Chamber of Commerce, Suva

Mr. Humphrey Chan
Chamber of Commerce, Suva

Mr. Yogesh Punja
Chamber of Commerce, Nadi

Ms. Susan Boyd
Australian High Commissioner to Fiji

Mr. Paul Kelly
Second Secretary, AusAID
Australian High Commission

Ms. Barbara Ibuai-Wymarra
Third Secretary, Political and Economic Section
Australian High Commission

Australia

Senator Amanda Vanstone
Minister of Justice

Ms. Janet Tomi
Assistant Secretary, International Organisations Branch - DFAT

Mr. Phillipe Allen
Governance Group, AusAID

Ms. Kathleen Brigdale
Department of Family and Community Services

Mr. Michel Chew
Sexual Assault and Child Abuse Unit, Australian Federal Police (AFP)

Mr. Terry Allen
Project Mandrake, AFP

Mrs. Lyn Pearmain
Project Mandrake, AFP

Ms. Fiona Knight
Department of Customs

Mr. Karl Alderson
Criminal Law Division, Attorney-General's Department

Ms. Susannah Ford
Human Rights Branch, Attorney-General's Department

Mr. Ian Glasgow
Commonwealth Directorate of Public Prosecutions

Ms. Jean French
International Branch, Department of Employment, Workplace Relations and Small Business

Ms. Melissa Frost
Department of Tourism

Ms. Susan Coles
A/G Director, International Law Group, Department of Foreign Affairs and Trade (DFAT)

Ms. Nicoli Manning-Campbell
International Law Group, DFAT

Ms. Colin Milner
Human Rights and Indigenous Issues Section, DFAT

Ms. Christine Beddoe
ECPAT

Mr. David Purnell
World Vision

Ms. Helen Bayes
Defence for Children International